

**BEFORE THE
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID
DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**ROBERT J. BENNETT
716 Freeman Lane, Suite C
Grass Valley, CA 95949**

**Hearing Aid Dispensers License No. HA
7365**

Respondent.

Case No. 1C-2012-29

OAH No. 2016070857

DECISION AND ORDER

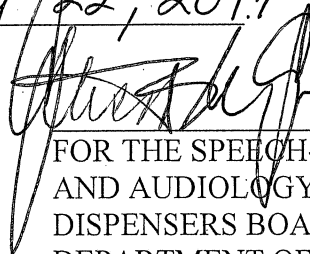
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, Department of
Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on

June 21, 2017

It is so ORDERED

May 22, 2017



FOR THE SPEECH-LANGUAGE PATHOLOGY
AND AUDIOLOGY AND HEARING AID
DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS

1 XAVIER BECERRA
Attorney General of California
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Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

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10
11 **BEFORE THE**
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID
DISPENSERS BOARD
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

15 **ROBERT J. BENNETT**
16 **716 Freeman Lane, Suite C**
Grass Valley, CA 95949

17 **Hearing Aid Dispensers License No. HA**
18 **7365**

19 Respondent.

Case No. 1C-2012-29

OAH No. 2016070857

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

20
21
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Paul Sanchez (Complainant) is the Executive Officer of the Speech-Language
26 Pathology and Audiology and Hearing Aid Dispensers Board (Board). He brought this action
27 solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney
28 General of the State of California, by Megan R. O'Carroll, Deputy Attorney General.

2. Respondent Robert J. Bennett, (Respondent) is represented in this proceeding by attorney Glenn W. Peterson, whose address is: 2267 Lava Ridge Court, Suite 210 Roseville, CA 95661.

3. On or about March 25, 2008, the Board issued Hearing Aid Dispensers License No. HA 7365 to Robert J. Bennett, (Respondent). The Hearing Aid Dispensers License was in full force and effect at all times relevant to the charges brought in Accusation No. 1C-2012-29, and will expire on March 31, 2018, unless renewed.

JURISDICTION

4. Accusation No. 1C-2012-29 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 4, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 1C-2012-29 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1C-2012-29. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 1C-2012-29.

4 10. Respondent agrees that his Hearing Aid Dispensers License is subject to discipline
5 and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
6 below.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Speech-Language Pathology and
9 Audiology and Hearing Aid Dispensers Board. Respondent understands and agrees that counsel
10 for Complainant and the staff of the Speech-Language Pathology and Audiology and Hearing Aid
11 Dispensers Board may communicate directly with the Board regarding this stipulation and
12 settlement, without notice to or participation by Respondent or his counsel. By signing the
13 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
14 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
15 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
16 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
17 action between the parties, and the Board shall not be disqualified from further action by having
18 considered this matter.

19 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
20 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
21 signatures thereto, shall have the same force and effect as the originals.

22 13. In consideration of the foregoing admissions and stipulations, the parties agree that
23 the Board may, without further notice or formal proceeding, issue and enter the following
24 Disciplinary Order:

25 DISCIPLINARY ORDER

26 IT IS HEREBY ORDERED that Hearing Aid Dispensers License No. HA 7365 issued to
27 Respondent Robert J. Bennett, is revoked. However, the revocation is stayed and Respondent is
28 placed on probation for five (5) years on the following terms and conditions.

1 1. MONITORING

2 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
3 Board for its prior approval a plan of practice in which Respondent's practice shall be monitored
4 by another hearing aid dispenser, who shall provide periodic reports to the Board. If the monitor
5 resigns or is no longer available, Respondent shall, within 15 days, move to have a new monitor
6 appointed, through nomination by Respondent and approval by the Board.

7 Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the
8 Board or its designee for prior approval, the name and qualifications of an individual who has
9 agreed to serve as a practice and billing monitor.

10 The practice and billing monitor shall (1) hold a current and valid California license in the
11 same field of practice as Respondent, (2) have held the license for a minimum of three (3) years;
12 (3) have had no disciplinary action taken against his/her license by the Board; and (4) be
13 independent, with no prior or current business, professional, personal, or other relationship that
14 could reasonably be expected to compromise the ability of the monitor to provide impartial and
15 unbiased supervision of the Respondent. An administrative citation and fine does not constitute
16 discipline and therefore, in and of itself, is not a reason to deny an individual as a monitor.

17 Once approved, the monitor(s) shall submit to the Board or its designee a plan for approval
18 by which Respondent's practice shall be monitored. The Respondent shall provide the monitor
19 with a copy of this Decision and Accusation or Statement of Issues. The monitoring shall be
20 general and not require the physical presence of the monitor during the time services are
21 performed, but does require an occasional, unrestricted review of the work performed as well as
22 quarterly monitoring visits at the office or place of practice.

23 Additionally, the monitor shall have full and unrestricted access to patient and billing
24 records of Respondent. The monitor may evaluate all aspects of Respondent's practice regardless
25 of Respondent's areas of deficiencies. Respondent shall obtain any necessary patient releases to
26 enable the monitor to review all client and fiscal records and to make direct contact with clients,
27 if necessary. Respondent shall execute a release authorizing the monitor to divulge any
28 information that the Board may request.

1 The approved monitor shall submit written reports to the Board on a quarterly basis, or
2 other frequency as determined by the Board, verifying that monitoring has taken place as required
3 and include an evaluation of Respondent's performance, compliance with his/her probationary
4 conditions, and existing laws governing the practice. It shall be the Respondent's responsibility to
5 assure that the required reports are filed in a timely manner.

6 If the monitor terminates his/her monitoring or is no longer available to serve in the monitor
7 role, Respondent must submit to the Board the name or names of a new monitor, including
8 qualifications and supervision plan within fifteen (15) days. If a new monitor is not approved by
9 the Board within thirty (30) days from the date of resignation of the previous monitor,
10 Respondent shall be suspended from practice until a new monitor has been approved by the Board
11 and the necessary documents are filed with the Board.

12 All costs of monitored practice shall be paid by the Respondent. Failure to pay costs will be
13 considered a violation of the probation order.

14 2. ETHICS COURSE

15 Within sixty (60) days of the effective date of this decision, Respondent shall enroll in a
16 course in ethics, at Respondent's expense, approved in advance by the Board. Respondent shall
17 submit a certification of successful completion to the Board not later than 15 calendar days after
18 successfully completing the course. Failure to successfully complete the course during the first
19 year of probation is a violation of probation.

20 3. SUPERVISION

21 Respondent shall not function as a supervisor during the period of probation for hearing aid
22 dispenser trainees.

23 4. OBEY ALL LAWS

24 Respondent shall obey all federal, state, and local laws, including all statutes and
25 regulations governing the practice of the licensee.

26 Further, Respondent shall, within five (5) days of any arrest, submit to the Board in writing
27 a full and detailed account of such arrest.

28 ///

1 5. COMPLY WITH PROBATION PROGRAM

2 Respondent shall fully comply with the probation program established by the Board and
3 shall cooperate with the representatives of the Board.

4 6. CHANGE OF ADDRESS NOTIFICATION

5 Respondent shall, within five (5) days of a change of residence or mailing address, notify
6 the Board in writing of the new address.

7 7. OUT OF STATE RESIDENCY

8 Respondent shall notify the Board immediately in writing if he leaves California to reside
9 or practice in another state.

10 Respondent shall notify the Board immediately upon return to California.

11 The period of probation shall not run during the time Respondent is residing or practicing
12 outside California.

13 8. TOLLING FOR CESSATION OF PRACTICE WHILE MAINTAINING IN-STATE
14 RESIDENCE

15 The period of probation shall not run during the time Respondent has ceased to practice
16 while continuing to reside in California. If, during probation, the Respondent ceases to practice,
17 Respondent is required to immediately notify the Board in writing of the date practice ceased and
18 the date practice will be resumed.

19 9. SUBMIT QUARTERLY WRITTEN DECLARATIONS

20 Respondent shall submit to the Board quarterly written declarations and verification of
21 actions signed under penalty of perjury. These declarations shall certify and document
22 compliance with all the conditions of probation.

23 10. NOTIFY EMPLOYER OF PROBATION TERMS AND RESTRICTIONS

24 When currently employed or applying for employment as a hearing aid dispenser,
25 Respondent shall notify his employer of the probationary status of Respondent's license. This
26 notification to the Respondent's current health care employer shall occur no later than the
27 effective date of the Decision placing Respondent on probation. The Respondent shall notify any
28 prospective health care employer of his probationary status with the Board prior to accepting such

1 employment. This notification shall be by providing the employer or prospective employer with a
2 copy of the Board's Decision placing Respondent on probation.

3 Respondent shall cause each employer to submit quarterly written declarations to the
4 Board. These declarations shall include a performance evaluation.

5 Respondent shall notify the Board, in writing, of any change in his employment status,
6 within ten (10) days of such change.

7 11. INTERVIEWS WITH BOARD REPRESENTATIVES

8 Respondent shall appear in person for interviews with the Board, or its designee, upon
9 request at various intervals and with reasonable notice. An initial probation visit will be required
10 within sixty (60) days of the effective date of the Decision. The purpose of this initial interview
11 is to introduce Respondent to the Board's representatives and to familiarize Respondent with
12 specific probation conditions and requirements. Additional meetings may be scheduled as needed.

13 12. FUNCTION IN LICENSED CAPACITY

14 During probation, Respondent shall work in his capacity in the State of California. If
15 Respondent is unable to secure employment in his capacity, the period of probation shall be tolled
16 during that time.

17 13. MAINTAIN A VALID LICENSE

18 Respondent shall, at all times while on probation, maintain an active current license with
19 the Board, including any period during which suspension or probation is tolled.

20 Should Respondent's license, by operation of law or otherwise, expire, upon renewal or
21 reinstatement, Respondent's license shall be subject to any and all terms of this probation not
22 previously satisfied.

23 14. VIOLATION OF PROBATION

24 If Respondent violates probation in any respect, the Board may seek to revoke probation
25 and carry out the disciplinary order that was stayed. The Respondent shall receive prior notice
26 and the opportunity to be heard. If a Petition to Revoke Probation, an Accusation or Petition to
27 Vacate Stay or other formal disciplinary action is filed against Respondent during probation, the
28

1 Board shall have continuing jurisdiction and the period of probation shall be extended until the
2 matter is final.

3 15. COMPLETION OF PROBATION

4 Respondent's license will be fully restored upon successful completion of probation.

5 16. COST RECOVERY

6 Respondent shall reimburse the Board for the cost of the investigation and prosecution of
7 this case. That amount shall be \$9,126.00, and shall be paid in full directly to the Board within
8 thirty (30) days prior to the end of the probation period.

9 ACCEPTANCE

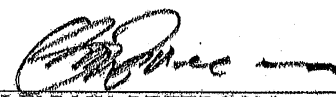
10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
11 discussed it with my attorney, Glenn W. Peterson, I understand the stipulation and the effect it
12 will have on my Hearing Aid Dispensers License. I enter into this Stipulated Settlement and
13 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
14 Decision and Order of the Speech-Language Pathology and Audiology and Hearing Aid
15 Dispensers Board.

16
17 DATED: March 24, 2017


18 ROBERT J. BENNETT
Respondent

19 I have read and fully discussed with Respondent Robert J. Bennett, HA the terms and
20 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
21 I approve its form and content.

22 DATED: 3/24/17


23 GLENN W. PETERSON
Attorney for Respondent
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25
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27
28

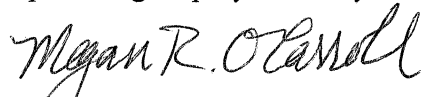
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

Dated: *april 4, 2017*

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General



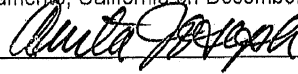
MEGAN R. O'CARROLL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1C-2012-29

By



1 KAMALA D. HARRIS
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2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 MEGAN R. O'CARROLL
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Facsimile: (916) 327-2247
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID**
10 **DISPENSERS BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 1C-2012-29

14 **ROBERT J. BENNETT**

ACCUSATION

15 McDonald Hearing Aid Center
363 S. Lower Sacramento Rd., #B
Lodi, CA 95242

16 Hearing Aid Dispensers License No. HA 7365

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Paul Sanchez (Complainant) brings this Accusation solely in his official capacity as
22 the Executive Officer of the Speech-Language Pathology and Audiology and Hearing Aid
23 Dispensers Board, Department of Consumer Affairs.

24 2. On or about March 25, 2008, the Speech-Language Pathology and Audiology and
25 Hearing Aid Dispensers Board issued Hearing Aid Dispensers License Number HA 7365 to
26 Robert J. Bennett, HA (Respondent). The Hearing Aid Dispensers License was in full force and
27 effect at all times relevant to the charges brought herein and will expire on March 31, 2016,
28 unless renewed.

JURISDICTION

3. This Accusation is brought before the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2531.02 of the Code states:

"Protection of the public shall be the highest priority for the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

5. Section 2533 of the Code states:

"The board may refuse to issue, or issue subject to terms and conditions, a license on the grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon the license of any licensee for any of the following:

"(a) Conviction of a crime substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist or hearing aid dispenser, as the case may be. The record of the conviction shall be conclusive evidence thereof.

"..."

"(d) Advertising in violation of Section 17500. Advertising an academic degree that was not validly awarded or earned under the laws of this state or the applicable jurisdiction in which it was issued is deemed to constitute a violation of Section 17500.

"(e) Committing a dishonest or fraudulent act that is substantially related to the qualifications, functions, or duties of a licensee.

"(f) Incompetence, gross negligence, or repeated negligent acts.

"(g) Other acts that have endangered or are likely to endanger the health, welfare, and safety of the public.

"(h) Use by a hearing aid dispenser of the term 'doctor' or 'physician' or 'clinic' or 'audiologist,' or any derivation thereof, except as authorized by law.

1 "(i) The use, or causing the use, of any advertising or promotional literature in a manner that
2 has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.

3 "(j) Any cause that would be grounds for denial of an application for a license.

4 "(k) Violation of Section 1689.6 or 1793.02 of the Civil Code."

5 "..."

6 6. Section 2538.35 of the Code states:

7 "A licensee shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser
8 a written receipt, signed by or on behalf of the licensee, containing all of the following:

9 "(a) The date of consummation of the sale.

10 "(b) Specifications as to the make, serial number, and model number of the hearing aid or
11 aids sold.

12 "(c) The address of the principal place of business of the licensee, and the address and office
13 hours at which the licensee shall be available for fitting or post fitting adjustments and servicing
14 of the hearing aid or aids sold.

15 "(d) A statement to the effect that the aid or aids delivered to the purchaser are used or
16 reconditioned, as the case may be, if that is the fact.

17 "(e) The number of the licensee's license and the name and license number of any other
18 hearing aid dispenser or temporary licensee who provided any recommendation or consultation
19 regarding the purchase of the hearing aid.

20 "(f) The terms of any guarantee or written warranty, required by Section 1793.02 of the
21 Civil Code, made to the purchaser with respect to the hearing aid or hearing aids."

22 7. Section 2538.36 of the Code states:

23 "(a) Whenever any of the following conditions are found to exist either from observations
24 by the licensee or on the basis of information furnished by the prospective hearing aid user, a
25 licensee shall, prior to fitting or selling a hearing aid to any individual, suggest to that individual
26 in writing that his or her best interests would be served if he or she would consult a licensed
27 physician specializing in diseases of the ear or if no such licensed physician is available in the
28 community then to a duly licensed physician:

- 1 "(1) Visible congenital or traumatic deformity of the ear.
2 "(2) History of, or active drainage from the ear within the previous 90 days.
3 "(3) History of sudden or rapidly progressive hearing loss within the previous 90 days.
4 "(4) Acute or chronic dizziness.
5 "(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
6 "(6) Significant air-bone gap (when generally acceptable standards have been established).
7 "(7) Visible evidence of significant cerumen accumulation or a foreign body in the ear
8 canal.
9 "(8) Pain or discomfort in the ear.
10 "..."

11 8. California Code of Regulations, title 16, section 1399.115, states:

12 "(a) The bureau may refuse to approve or approve subject to terms and conditions a hearing
13 aid dispenser's authority to supervise a trainee-applicant, or may suspend, revoke or impose
14 probationary conditions on a hearing aid dispenser's authority to supervise a trainee-applicant for
15 any of the following causes:

16 "(1) The failure to comply with section 3357 of the code or any of the regulations contained
17 in this article which is a prima facie violation, or is confirmed by an internal investigation report
18 signed by the chief, or by a formal investigation by the Division of Investigation of the department
19 within the preceding 36 months. "Confirmed by formal investigation" means the investigator
20 assigned the matter has written a final investigation report which has been countersigned by a
21 Supervising Special Investigator.

22 "(2) The violation of any provision of the Hearing Aid Dispensers Licensing Law or the
23 regulations contained in this chapter which is confirmed by an internal investigation report signed
24 by the executive officer, or by a formal investigation by the Division of Investigation of the
25 department within the preceding 36 months. "Confirmed by formal investigation" means the
26 investigator assigned the matter has written a final investigation report which has been
27 countersigned by a Supervising Special Investigator.

28 ///

1 "(3) The dispenser's license has been revoked, suspended, or subject to any restrictions
2 within the preceding 36 months.

3 "(4) An Accusation has been filed against the dispenser under the Administrative Procedure
4 Act by the Attorney General's office and the charges are pending.

5 "..."

6 9. California Code of Regulations, title 16, section 1399.126, states:

7 "(a) For purposes of Section 3365.5 of the code, a significant air-bone gap is defined as a
8 difference of 15 decibels or more between the higher air conduction and the lower bone
9 conduction pure tone thresholds at 2 or more succeeding octave frequencies of 500 Hertz through
10 and including 4000 Hertz.

11 "(b) Tests for significant air-bone gap shall be performed in a suitable environment using
12 appropriate equipment to establish threshold values and with appropriate masking procedures
13 employed."¹

14 10. California Code of Regulations, title 16, section 1399.132

15 "For the purpose of denial, suspension, or revocation of a hearing aid dispenser's license
16 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
17 crime or act shall be considered substantially related to the qualifications, functions, and duties of
18 a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a
19 hearing aid dispenser to perform the functions authorized by his license in a manner consistent
20 with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to
21 those involving the following:

22 "(a) Any violation of the provisions of Sections 650, 651, 651.3 and 655.2 of the code.

23 "(b) Any violation of the provisions of Chapter 7.5, Division 2 of the Business and
24 Professions Code."

25 ///

26 ///

27 _____
28 ¹ Section 3365.5 is now renumbered as section 2538.36.

1 11. Section 651 states:

2 "(a) It is unlawful for any person licensed under this division or under any initiative act
3 referred to in this division to disseminate or cause to be disseminated any form of public
4 communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image
5 for the purpose of or likely to induce, directly or indirectly, the rendering of professional services
6 or furnishing of products in connection with the professional practice or business for which he or
7 she is licensed. A 'public communication' as used in this section includes, but is not limited to,
8 communication by means of mail, television, radio, motion picture, newspaper, book, list or
9 directory of healing arts practitioners, internet, or other electronic communication.

10 "(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a
11 statement or claim that does any of the following:

12 "(1) Contains a misrepresentation of fact.

13 "(2) Is likely to mislead or deceive because of a failure to disclose material
14 facts.

15 "(3)(A) Is intended or is likely to create false or unjustified expectations of
16 favorable results, including the use of any photograph or other image that does not
17 accurately depict the results of the procedure being advertised or that has been altered
18 in any manner from the image of the actual subject depicted in the photograph or
19 image.

20 "(B) Use of any photograph or other image of a model without clearly stating in
21 a prominent location in easily readable type the fact that the photograph or image is of
22 a model is a violation of subdivision (a). For purposes of this paragraph, a model is
23 anyone other than an actual patient, who has undergone the procedure being
24 advertised, of the licensee who is advertising for his or her services.

25 "(C) Use of any photograph or other image of an actual patient that depicts or
26 purports to depict the results of any procedure, or presents 'before' and 'after' views of
27 a patient, without specifying in a prominent location in easily readable type size what
28 procedures were performed on that patient is a violation of subdivision (a). Any

1 'before' and 'after' views (i) shall be comparable in presentation so that the results are
2 not distorted by favorable poses, lighting, or other features of presentation, and (ii)
3 shall contain a statement that the same 'before' and 'after' results may not occur for all
4 patients.

5 "(4) Relates to fees, other than a standard consultation fee or a range of fees for
6 specific types of services, without fully and specifically disclosing all variables and
7 other material factors.

8 "(5) Contains other representations or implications that in reasonable
9 probability will cause an ordinarily prudent person to misunderstand or be deceived.

10 "(6) Makes a claim either of professional superiority or of performing services
11 in a superior manner, unless that claim is relevant to the service being performed and
12 can be substantiated with objective scientific evidence.

13 "(7) Makes a scientific claim that cannot be substantiated by reliable, peer
14 reviewed, published scientific studies.

15 "(8) Includes any statement, endorsement, or testimonial that is likely to mislead
16 or deceive because of a failure to disclose material facts.

17 "(c) Any price advertisement shall be exact, without the use of phrases, including, but not
18 limited to, 'as low as,' 'and up,' 'lowest prices,' or words or phrases of similar import. Any
19 advertisement that refers to services, or costs for services, and that uses words of comparison shall
20 be based on verifiable data substantiating the comparison. Any person so advertising shall be
21 prepared to provide information sufficient to establish the accuracy of that comparison. Price
22 advertising shall not be fraudulent, deceitful, or misleading, including statements or
23 advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In
24 connection with price advertising, the price for each product or service shall be clearly
25 identifiable. The price advertised for products shall include charges for any related professional
26 services, including dispensing and fitting services, unless the advertisement specifically and
27 clearly indicates otherwise.

28 ///

1 "(d) Any person so licensed shall not compensate or give anything of value to a
2 representative of the press, radio, television, or other communication medium in anticipation of,
3 or in return for, professional publicity unless the fact of compensation is made known in that
4 publicity.

5 "(e) Any person so licensed may not use any professional card, professional announcement
6 card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a
7 similar professional notice or device if it includes a statement or claim that is false, fraudulent,
8 misleading, or deceptive within the meaning of subdivision (b).

9 "(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona
10 fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

11 "(g) Any violation of this section by a person so licensed shall constitute good cause for
12 revocation or suspension of his or her license or other disciplinary action.

13 "..."

14 "(i) Each of the healing arts boards and examining committees within Division 2 shall adopt
15 appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with
16 Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

17 "Each of the healing arts boards and committees and examining committees within Division
18 2 shall, by regulation, define those efficacious services to be advertised by businesses or
19 professions under their jurisdiction for the purpose of determining whether advertisements are
20 false or misleading. Until a definition for that service has been issued, no advertisement for that
21 service shall be disseminated. However, if a definition of a service has not been issued by a board
22 or committee within 120 days of receipt of a request from a licensee, all those holding the license
23 may advertise the service. Those boards and committees shall adopt or modify regulations
24 defining what services may be advertised, the manner in which defined services may be
25 advertised, and restricting advertising that would promote the inappropriate or excessive use of
26 health services or commodities. A board or committee shall not, by regulation, unreasonably
27 prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or
28 commodities, by either outright prohibition or imposition of onerous disclosure requirements.

1 However, any member of a board or committee acting in good faith in the adoption or
2 enforcement of any regulation shall be deemed to be acting as an agent of the state.

3 "(j) The Attorney General shall commence legal proceedings in the appropriate forum to
4 enjoin advertisements disseminated or about to be disseminated in violation of this section and
5 seek other appropriate relief to enforce this section. Notwithstanding any other provision of law,
6 the costs of enforcing this section to the respective licensing boards or committees may be
7 awarded against any licensee found to be in violation of any provision of this section. This shall
8 not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing
9 law to seek appropriate relief.

10 12. Section 652 of the Code states, in pertinent part:

11 "Violation of this article [Article 6, commencing with Section 650 of the Code] in the case
12 of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation
13 of his or her license by the board by whom he or she is licensed, or if a license has been issued in
14 connection with a place of business, then for the suspension or revocation of the place of business
15 in connection with which the violation occurs. The proceedings for suspension or revocation
16 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
17 Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and each board
18 shall have all the powers granted therein."

19 13. Section 1793.02 of the Civil Code, also known as the Song-Beverly Consumer
20 Warranty Act, provides:

21 "(a) All new and used assistive devices sold at retail in this state shall be accompanied by
22 the retail seller's written warranty which shall contain the following language: "This assistive
23 device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is
24 not specifically fit for your particular needs, it may be returned to the seller within 30 days of the
25 date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you
26 return the device, the seller will either adjust or replace the device or promptly refund the total
27 amount paid. This warranty does not affect the protections and remedies you have under other
28 laws." In lieu of the words "30 days" the retail seller may specify any longer period.

"(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.

"(c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be canceled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

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COST RECOVERY

14. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

15. Paragraph 11 above, referring to the costs provision of section 651, subsection (j), is re-alleged and incorporated herein by reference.

FACTS

Consumer M.B.

16. Respondent, Hearing Aid Dispenser Robert Bennett, is employed by McDonald Hearing Aid Center, (MHAC), a corporation with several branch locations throughout Northern California. Respondent has worked at several of the branch locations, including the Lodi branch.

² The text of Civil Code section 1793.02 cited here is the version that was in force at the time of the events alleged in this Accusation.

1 and the Roseville branch. MHAC disseminates advertisements through mailers and newspapers
2 each month.

3 17. During January of 2012, Sister M.B., an elderly catholic nun, received a hearing test
4 at a Kaiser Permanente Facility and was advised that she had a mild to moderate hearing loss that
5 would benefit from hearing aids. Sister M.B. relayed this information to the financial advisor of
6 her diocese, who advised her of their policy to conduct a price-comparison before making any
7 large purchase. Sister M.B. consulted with another nun, Sister F.W., who had observed several
8 advertisements for MHAC's sale on \$700.00 hearing aids. Sister F.W. provided the
9 advertisements to Sister M.B., and agreed to accompany her to the MHAC branch location to
10 compare prices.

11 18. On or about January 20, 2012, Sister M.B. and F.W. entered the MHAC branch
12 location in Lodi, where Respondent was working. Sister M.B. immediately explained that she
13 was not authorized to make any purchases herself without consulting with her Order's financial
14 advisor, and that she was merely there to conduct a price comparison of the \$700.00 hearing aids
15 she saw advertised. Respondent conducted a hearing test on Sister M.B.

16 19. After the hearing test was completed, a woman in a white coat entered the room
17 waiving the audiometric test and told Sister M.B. that she had a very serious hearing loss. The
18 woman in the white coat, Ashley Brown, was issued a hearing aid dispenser trainee license on or
19 about May 25, 2010, but the license had expired on or about November 30, 2011. Brown was not
20 licensed to fit or sell hearing aids during her interactions with Sister M.B. Sister M.B. was shaken
21 and upset by the statements that she had a serious hearing loss, and found that Respondent was
22 speaking very fast to her, as if she could not get a word in. Sister M.B. asked Brown about the
23 \$700.00 hearing aids advertised, but Brown told her that those are only suitable for people in the
24 top part of the graph, and her hearing loss extended to the bottom of the graph. Sister M.B.
25 restated to Respondent and Brown that she is not authorized to make any large expenditures
26 without prior authorization from her Order.

27 20. Respondent brought out paperwork for an order for hearing aids, and explained that if
28 she did not fill out the forms, the offer would not be available later. Sister M.B. asked if she

1 could take the paperwork with her to review before signing anything. Brown told her that she had
2 already entered into the contract, and it did not really matter if she signed the paperwork or not.
3 Sister M.B. finally signed the paperwork because she felt shaken up and wanted to leave.

4 21. Respondent entered into a purchase agreement with Sister M.B. on January 20, 2012,
5 for the purchase of a pair of Intela-Hear hearing aids at the cost of \$4,491.00. MHAC records
6 show that Sister M.B. opened a credit card through Credit Care to finance the purchase. Once
7 Sister M.B. left the MHAC branch location and began reviewing the purchase agreement, she saw
8 that she had opened a credit card and had purchased an expensive hearing aid package. As a
9 result of her shock and distress, Sister M.B. was unable to drive herself home, and she and Sister
10 F.W. stayed the night in a nearby hotel. Sister M.B. was still shaken up that evening, and tripped
11 and fell, causing her wrist to fracture.

12 22. On or about January 23, 2012, Sister M.B. called MHAC and left a message for
13 Respondent explaining that she wanted to cancel her order. On or about January 26, 2012,
14 Respondent returned Sister M.B.'s call and told her that any cancelation would incur a 15%
15 cancelation fee, but that she could avoid the cancelation fee if she went through with the order and
16 completed the Patient Journey and was not satisfied with the hearing aids.

17 23. On or about February 15, 2012, Hearing Aid Dispenser (HAD) Melissa Peacock
18 employed by Respondent as the Chief Compliance Officer for MHAC, wrote a letter to Sister
19 M.B. advising her that a cancelation fee of \$673.65 was being imposed, but that she could choose
20 to apply that fee towards the purchase of another Intela-Hear hearing aid instrument through
21 MHAC. Sister M.B.'s hearing loss is within the range deemed appropriate by industry standards
22 for the entry level hearing aid advertised by MHAC.

23 **Consumer A.K.**

24 24. On or about May 9, 2012, A.K., an 82-year old woman, entered the Roseville Branch
25 of the MHAC at 1601 Douglas Boulevard, Roseville, California. She was met by Respondent and
26 HAD Melissa Peacock. HADs Peacock and Respondent conducted an audiogram test, showing
27 A.K. had a moderate to severe hearing loss. The audiogram test results show that A.K. had an air-
28 bone gap in the right ear of greater than 15dB, and does not show than any bone conduction

1 testing was done in the left ear. In the Medical History Form A.K. completed at MHAC, she
2 checked the box to indicate yes to the following three conditions: "Pain and Discomfort in the
3 ear"; "Acute or recurring dizziness"; and "Ringing in the ears." Despite these indications and the
4 air-bone gap shown on the audiogram, Respondent and HAD Peacock failed to refer A.K. for a
5 medical clearance or consultation before proceeding with the sale of hearing aids.

6 25. On or about May 9, 2012, A.K. entered into a purchase agreement with Respondent
7 for a pair of Intela-Hear hearing aids, for a total price of \$4,941.00. The purchase agreement
8 indicated that the original cost of the pair was \$10,980.00 and she received a 50% off sale,
9 with an additional AARP discount. A.K. returned to the branch location on or about May 24,
10 2012 and was seen by Respondent, who fitted her with the hearing aids. A.K. has degenerative
11 arthritis in her jaws, and small ear canals. When she started wearing the hearing aids, she began
12 to develop pain in her ears. She tried to keep wearing the hearing aids in the hope that she would
13 get used to them, but after four days the pain persisted and got worse, and she removed them.

14 26. Even after removing the hearing aids, A.K. continued to have pain, and saw her
15 doctor who referred her to an otolaryngologist. The otolaryngologist advised her to stop wearing
16 the hearing aids, and return them. On or about June 1, 2012, A.K. returned to MHAC and asked
17 to return the hearing aids due to severe degenerative arthritis, causing pain in her ears. Staff at
18 MHAC told A.K. to continue wearing the hearing aids. On or about June 12, 2012, A.K. returned
19 to MHAC, and provided staff with a copy of the otolaryngologist's note instructing her not to
20 wear the hearing aids. Respondent and other staff at MHAC refused to accept the return, and
21 continued to advise A.K. to wear the hearing aids, or to allow an exchange of different hearing
22 aids. Even after speaking with the otolaryngologist who treated A.K., MHAC refused to accept
23 the return and refund A.K. the purchase price. After additional telephone calls and written
24 communication with the otolaryngologist, MHAC agreed to provide A.K. with a refund on or
25 about August of 2012. MHAC did not refund A.K. the purchase price until November 27, 2012.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Fraudulent or Dishonest Act)**

3 27. Paragraphs 16-23 above are re-alleged and incorporated by reference herein.

4 28. Respondent is subject to disciplinary action under section 2533, subdivision (e),
5 which incorporates section 651, committing a fraudulent or dishonest act, in that he committed
6 fraudulent or dishonest acts in connection with the sale of a hearing aid to Sister M.B., which
7 include, but are not limited to the following:

8 (a) persuading Sister M.B. to enter into a purchase agreement, and to open a line of credit,
9 despite her statements that she was not authorized to make a purchase and was only seeking
10 information for purposes of price comparison;

11 (b) falsely telling P.D. that she could return the devices for a refund if the hearing aids did
12 not work for her while omitting the 15% cancelation fee and the onerous programs she would
13 have to complete before being considered for a refund; and

14 (c) selling the \$4,491.00 Intela-Hear hearing aids to Sister M.B. without offering the
15 alternative of the \$700.00 hearing aid that was advertised by MHAC and appropriate for her
16 hearing loss.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Song-Beverly Act)**

19 29. Paragraphs 16-23 above are re-alleged and incorporated by reference herein.

20 30. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
21 he violated Section 1793.02 (Song-Beverly Act), by entering into a purchase agreement that
22 imposed a 15% cancelation fee.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Gross Negligence)**

25 31. Paragraphs 24-26 above are re-alleged and incorporated by reference herein.

26 32. Respondent is subject to disciplinary action under section 2533, subdivision (f), gross
27 negligence, in that he proceeded to sell hearing aids to A.K. without having a bone conduction
28

1 test of her left ear, and before she had been seen by a physician based on the charted air-bone gap
2 in her left ear, as well as the reported pain and dizziness.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 33. Paragraphs 24-26 above are re-alleged and incorporated by reference herein.

6 34. Respondent is subject to disciplinary action under section 2533, subdivision (f), gross
7 negligence, in that he failed to follow the advice of a physician when A.K. produced
8 documentation from an otolaryngologist instructing her not to wear hearing aids, and instead
9 instructed A.K. to continue wearing the hearing aids to complete the fitting process.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Song-Beverly Act)**

12 35. Paragraphs 24-26 above are re-alleged and incorporated by reference herein.

13 36. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
14 he violated Section 1793.02 (Song-Beverly Act), by entering into a purchase agreement that
15 imposed a 15% cancelation fee, and by failing to promptly return and refund the total amount paid
16 for hearing aids that were not fit for A.K.'s needs.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board issue a decision:

1. Revoking or suspending Hearing Aid Dispensers License Number HA 7365, issued to Respondent Robert J. Bennett.
2. Revoking Respondent Robert Bennett's ability to supervise trainee and temporary licensees;
3. Ordering Respondent Robert Bennett, to pay the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
4. Taking such other and further action as deemed necessary and proper.

DATED:

December 4, 2015



PAUL SANCHEZ
Executive Officer
Speech-Language Pathology and Audiology and Hearing
Aid Dispensers Board
Department of Consumer Affairs
State of California
Complainant

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